

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.123 OF 2001
IN
FIRST APPEAL NO.60 OF 1991

Shri Shankar Manya Chimne, aged adult,)
residing at Jui Kamothe, Taluka Panvel,)
District Raigad.) ... Appellant

Versus

The State of Maharashtra (through the)
Special Land Acquisition Officer) Metro)
Centre No.1, Panvel Dist. Raigad.) ... Respondents

Ms. Seema Sarnaik for the petitioner.

Mr. Manoj Mhambrey, A.G.P. for the respondents.

CORAM : SMT. RANJANA DESAI &
D.B. BHOSALE, JJ.

DATED : 19TH JANUARY, 2006.

ORAL JUDGMENT:- [Per (Smt.) Ranjana Desai, J.]

1. The appellant had challenged in this Letters Patent Appeal judgment and order dated 7/8/2000 passed by the learned single judge in First Appeal No.60 of 1991.

2. The appellant is the claimant in Land Acquisition Reference No.31 of 1987 decided by the Civil Judge, Senior Division, Raigad. The lands under

reference admeasuring 9900 sq. meters are situated at Village Kamothe, Panvel, Dist. Raigad. The lands are acquired for CIDCO. The appellant is the owner of the acquired lands. He was awarded compensation at Rs.2/- per sq. mtr. He preferred a claim under section 18 of the Land Acquisition Act for enhanced compensation. The learned Civil Judge, Senior Division, Raigad, partly allowed the reference on 9/10/1989. The learned Civil Judge considered the evidence of the appellant and the valuer and came to the conclusion that the appellant had proved that the compensation awarded to him was inadequate and that he was entitled to enhanced compensation. The learned judge, therefore, directed the State to award compensation at the rate of Rs.12/- per sq. mtr. The learned judge directed that the appellant would be entitled to an amount of Rs.4,30,009.24 with future interest under sections 28 and 34 of the Land Acquisition Act on the respective amounts and proportionate costs of the reference.

3. Being aggrieved by the judgment, the State of Maharashtra preferred an appeal to this court. Cross-objections were filed by the appellant. The learned single judge took into consideration the fact that as per the report of the valuer, the land in question is situated near Zilla Parishad road leading to Jui-Kamothe Village and it is also far away from the extended limits of Panvel town. The learned single judge referred to the judgment of the Division Bench of this court in First Appeal No.382 of 1984 and other connected appeals decided on 3rd/4th/5th/6th/9th & 19/3/1987 in State of Maharashtra v. Bama

Balu Tembhe. The learned single judge observed that in that case, this court has considered lands from Village Kamothe in three groups and has awarded compensation at the rate of Rs.12/- per sq. mtr. for the lands from Village Kamothe, which are away from the National Highway and the Sion-Panvel Road, but which are near the Zilla Parishad road. The learned single judge held that the situation of the lands in the present case is identical to the situation of the lands considered by the Division Bench from the same village. He, therefore, found that the compensation awarded at the rate of Rs.12/- per sq. mtr. is adequate and hence no interference is necessary with the rate of compensation. In view of the judgment of the Supreme Court in **Prem Nath Kapur v. National Fertilizer Corporation of India Limited (1996) 2 SCC 71**, which states that interest under section 28 of the Land Acquisition Act can be awarded only on the amount of land value, he directed the reference court to modify its award in the light of the said judgment. He disposed of the appeal as well as the cross objections with the above direction. The said judgment is challenged in this letters patent appeal.

4. We have heard Ms. Sarnaik, the learned counsel appearing for the appellant and Mr. Mhambrey, the learned A.G.P. appearing for the respondents. Ms. Sarnaik strenuously contended that the learned single judge has erred in placing the case of the present appellant in the group of cases where compensation is awarded at Rs.12/- per sq. mtr. She drew our attention to the evidence of the claimant where he has stated that the lands

are situated in Jui-Kamothe Village and Village Kamothe is abutting on Panvel-Sion Highway and Bombay Pune National Highway No.4 as well as Railway Diva-Panvel is close to the village. She submitted that the land is also situated near Jawahar Industrial Estate. According to the learned counsel, this evidence has been ignored by the learned single judge. Drawing our attention to the judgment on which the learned single judge has placed reliance, the learned counsel contended that the case of the present appellant would fall in the second category of cases where the compensation is awarded at the rate of Rs.14/- per sq. mtr. She submitted that the situation of the land of the appellant is comparable to the situation of the land in the second category of cases. We are unable to agree with the learned counsel.

5. The claimant examined himself. Valuer Jeevan Narayan Kulkarni was also examined. The learned judge dealing with the reference considered the judgments in other land references in respect of the acquired pieces of lands situate at some distance away from the appellants' land. He considered the fact that there is variation in the land rates awarded by various courts in respect of lands adjoining the lands under reference. The rate varied from Rs.12/- per square meter to Rs.15/- per square meter. Considering the fact that in Jui-Kamothe area the Land Acquisition Officer has accepted land rate at Rs.12/- per square meter, the learned judge held that it would be just and proper to award compensation at the rate of Rs.12/- per square meter though the valuer has estimated the rate at Rs.20/- per square meter. The learned single judge has rightly upheld this reasonings.

6. We are also of the opinion that the reliance placed by the learned single judge on the judgment of this court in First Appeal No.382 of 1984 and other companion appeals is apt. In that case after considering several aspects such as situation of the lands in question, their proximity to the Panvel-Sion Highway, Bombay-Pune National Highway and to Jawahar industrial Estate, this court has made three categories of lands of village Kamothe and decided the rate of compensation and present lands are comparable to the lands for which compensation is awarded at the rate of Rs.12/- per square meter. We have no hesitation in endorsing this view of the learned single judge. Ms. Sarnaik has not been able to point out any significant features of the lands in question which would attract higher rate of compensation than that is awarded. Every significant aspect has been considered by the reference court and the learned single judge and the present lands are covered by the above referred judgment of this court. In such a situation, interference with the impugned order is not warranted. Letters Patent Appeal is dismissed.

[SMT. RANJANA DESAI, J.]

[D.B. BHOSALE, J.]